The Court Appearance

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Moot Court

The purpose of the Moot Court is to familiarize one with the routine manner in which the courts qualify a witness as an expert and lead you through your testimony. The development of protocol in the courts is the result of hundreds of years of tradition. Forget the fiction you have seen on television regarding forensic presentation. Whether you appear before the courts of Massachusetts or the United States, you will face a fairly similar battery of questions from the prosecutor to qualify you. The defense is permitted a degree of inquiry about your credentials and experience. The purpose of the Moot Court is to acquaint you with the atmosphere and the questions you will most likely face, so that your first appearance in court will feel familiar, you will feel confident and you will appear professional.

Preparations for Court

Personal appearance
Our culture has become more relaxed about appearances over the years. Presentation within the confines of the lab walls is a personal option. Outside the SLI in the Courts of Massachusetts we represent the Commonwealth itself and the professional reputation of the Drug Laboratory. Forensic experts agree that personal expression is to be practiced outside the Court. In Court, the first responsibility of the forensic witness is to support the credibility of their data. Manner and appearance should not distract the Court from your testimony supporting the data you have produced. The jury should not be drawn to your appearance as an issue. The focus should be on the testimony.
Navy blue, black and beige outfits are conventional in the professions and psychologists and fashion experts suggest that these "colors" are psychologically neutral. People in these colors succeed in conveying their points to an audience because the focus is on the presentation not on the presenter. A classic color error is green, which is associated with a rural appearance suggesting an unsophisticated farmer or country bumpkin.

Materials

Securing notes
Despite all the scientific discipline you apply to your work and the professional appearance you dress to achieve, you efforts will be in vain if you spill your unsecured notes. If you notes are loose in a manila envelope, if you drop them they wwill be scattered and out order. Anticipate the very small probability of dropping your notes and having them scattered on the court floor by having them securely attached to each other with heavy gauge staples.

What notes to take

In short, your notes should be your discovery package because the only material you may refer to in court is the material which the defense has had the opportunity to examine. That would of course be:

1) your cv
2) evidence office receipts
3) your chemist's notes
4) and the notes of your colleagues in the consideration of instrumental analysis

Use of notes provided in the "discovery package"

It is not expected that the analyst can remember specific details of any particular case. This is why you have brought your notes but they can only be used if the defense has had occasion to review them in discovery. On rare occasions, a discovery package will have not made it to the defense and you may not be allowed to use your notes. You will have to rely on your recognition of the certificates, the evidence packages and your familiarity with routine protocol to answer questions.

When you reach the point where you must use your notes to answer a question, ask the judge whether you may refer to your notes. At this point the judge will ask the defense if they have any objection to the use of the notes. If they have had access to the notes in discovery they will not object. However, if they have not had the notes previously, you will not be permitted to use them.

Do not loose your composure. You have done your job and you will complete the task by answering questions honestly and as accurately as you can from memory. The substance of the matter now is to identify the work by the certificate, your markings on the evidence bag and your knowledge of the protocols to which you have adhered in the analysis.

The only other material which you may be able to refer to, are academic texts such as a Merck's handbook, for reference to a citation in the course of testimony.

There are two caveats regarding this:

1) you must ask the court's permission (the judge) if you may make the citation
2) you should never bring the original text, for your valuable book maybe taken in evidence and you will likely lose it. Carry only the copied title page of the reference and the copy of the citation itself.

At this point it may be important to note the moment you might want to refer to an established handbook. There is a possibility of the defense asking you to name synonyms for the drug in question, recite or draw its molecular structure or note its molecular weight.

You may alert the court that "I have the responsibility of identifying virtually any and all compounds through various laboratory tests and no one commits all the synonyms and structures to memory. We simply look them up in a handbook as necessary. I have the Merck Handbook page, with that structure if the court desires the material." The judge will rule whether you can cite the material. In any event, you have established the legitimate notion that memorization of specific details of limitless compounds is not humanly possible. That should end that line of questioning.

Arrival at Court

Arrival time

You will be summonsed for a particular day and will be called to testify if the prosecutor needs you. If there is a special sense of urgency about your availability, the prosecutor will give you a specific time to be at court. For general purposes, you will be on call to appear at the need of the prosecutor or the court on the day noted on the summons. For a more lengthy trial, the summons will refer to the opening of the trial and the prosecutor will give you the most likely moment you will be needed as the trial progresses.

Before going to the trial, discuss with the prosecutor whether they anticipate any particular controversy. Indeed, screen your materials for what you might anticipate as a controversy and offer it to the ADA for their consideration. For, example a cross out and correction in a record may be discussed. In some cases, the prosecutor may want to become acquainted with you and might want to meet earlier before the trial to consider certain details.

Security

Thoughtfully consider materials you are carrying into the court, particularly regarding metallic materials which you may have to surrender. For instance, a treasured pocket knife from your beloved grandfather may be lost. Even something as benign as a fingernail clipper may be seized.

Meeting the DA

Have a pre-appointed location to meet your ADA. Identify yourself as a prosecution witness to the guards and get their assistance finding the meeting place.

GO TO THE RESTROOM NEXT

Go directly to the restroom, straighten your tie, brush your hair and attend to everything else now for your comfort. Once the ADA sees you or the Bailiff recognizes who you are, you are subject to the Court's convenience, not your own.

NOW GO IMMEDIATELY TO THE PROSECUTOR

Introduce yourself to the prosecutor and reassure them you have arrived. Inquire whether any controversy may have arisen regarding your testimony or materials and consider a resolution to the issue. After checking in, ask for a neutral place to wait where the bailiff will know where to find you when called to testify. Ask how soon you might actually be called to testify so you may consider your need to re-adjust your tie, brush your hair, etc.

WAITING

You will not be waiting for your case in the courtroom itself. Unlike television dramas, witnesses do not sit through the case in the courtroom. You will wait outside the court and a bailiff will call for you when the court is ready for your testimony.

In some cases the DA may have a quiet spot where you can await your call. If you are with police officers, you may introduce yourselves but they and you know that the case cannot be discussed. Most likely you will be waiting in the hall outside the court on a bench.

If you are in a common hall, the defendant's family, witnesses or counsel may be waiting there as well. It would be inappropriate to converse with people with whom you're not acquainted or discuss issues professionally with the DA or Court officials in an indiscrete manner. Indeed, talking with the arresting officers themselves may represent that we work directly with the police, in front of the defense team and suggest they influence the lab agenda and outcome of lab work. It is DPH-Drug Lab philosophy that we do not work directly with the police. This is a challenge point you may well face in the courtroom, "Do you as a chemist work for the police?" It will be difficult to present that notion if the defense attorney has seen you buddy up with the police in the halls.

The call from the Bailiff

When the court needs you the Bailiff will call out into the hallway for you to come in. This is not the time to be in the bathroom or otherwise be out of earshot of the bailiff. Hopefully, the prosecutor can give you a general idea of when you will be called. If the time is close and you must disappear from the hall for a couple of minutes, peek into the courtroom and a clerk or bailiff will approach you. Alert them you have to leave the hall for a bathroom break or get a muffin in the cafeteria to keep from fainting.

The Courtroom

Upon entering the court, you will most likely sit in the empty chair on the left or the right of the judge. Most likely you will be directed to a particular spot by the bailiff. If your place isn't apparent, ask the bailiff or clerk who brought you in where you should sit. Before sitting, turn to the clerk to be sworn in.

At the swearing in, the bailiff may ask you to clearly state your name and perhaps your address. Your address is, 305 South Street, Boston Mass. This is the address through which any inquiry may be pursued. It is our understanding that the work address is adequate and it is the custom of the Drug Lab to only report the work address.

Order of Testimony and general practices

Witness for the state Prosecutor opens

Your appearance in court may be at the request of the prosecutor (DA) or at the insistence of the defense attorney. Regardless, in your testimony you will be examined first by the prosecutor, as your presentation is evidence bearing upon the state's case.

The initial consideration of the DA will be to have the court recognize your expertise. You are completely qualified to the tasks you have performed. Be confident about this. After the DA has you present your credentials, the defense will most likely stipulate or acknowledge your expertise. In which case, you will be formally permitted to draw conclusions from your studies. For example, when you represent that a microcrystalline test was positive, you may express the opinion that the sample tested was cocaine. This usage of "opinion" is a point in procedure at law. You may be absolutely certain as a scientist that the sample was cocaine and be willing to stake you families soul's that it is cocaine. There is a chance however that you might be directed to restate you declaration in the manner of it is your "opinion" that the matter is cocaine, rather than saying "it is cocaine."

After you are examined by the prosecutor, the defense counsel may choose to examine you as well. If all has gone well in your presentation before the ADA, the defense may choose to get you out of the Court, out of sight and out of mind as soon as possible. They will have no questions of you.

If the defense chooses to examine you, they will either do it with elegance and a deference to your education and training or perhaps (very rarely) in a more vulgar manner.

In the former case, the defense will have a particular point they are trying to make. They will address you elegantly and will be looking to question or clarify certain points that may help their defendant. For instance, they may inquire about the number of tests performed and their meaning, to explore whether the analysis was credible and according to established protocols.

An example might be, "How can you be sure it was 14.00 grams?"
"Did you round up the reading from your balance?"
"Did you perform a qc test on the balance before you used it?"
Straightforward questions gain the defense straightforward answers and lend credibility to some reasonable doubt they may produce. Having worked an honest analysis within the conventions of good lab practice and SWGDRUG recommendations, you can answer any question in a straightforward manner. Not answering in a straightforward manner may have consequences for your testimony as noted below, in discussion of the vulgar defense approach.

In very rare instances, the defense council may take a more vulgar approach to its cross examination. In a range of approaches they may:

1) address and question you without deference to your expertise
2) suggest that your education and training is inadequate
3) suggest you have some pre-knowledge of the defendant (ethnicity, prior criminal history)
4) suggest you collude with the police about test outcome
5) suggest you are under the pressure of production quotas

Of course, you have been qualified by the Drug Lab training and by the Court in the beginning of your testimony. You may answer confidently to the other questions as well. These very same inquiries can be made with eloquence and respect and of course must be answered. But if the defense inquiries are out of form, you may expect the ADA to object and ask the judge to retain the propriety of the court. If the defense approach is particularly disrespectful, the judge may initiate this correction.

But if the defense has no stronger case for their defendant than to rattle you, they will do so at a level below the threshold the court would intervene. "Getting to you" can accomplish two things for a defense.

1) You become upset and defensive, which makes your presentation less professional. "Getting to you" can make you slower to answer, stammer, confuse the language of your answers, etc. You may be more prone to slip ups or give contradictory answers to similar but rephrased questions. The average jurist has 11.9 years of education and must rely on a clear and understandable

testimony to feel their ruling is correct and beyond a reasonable doubt. The defense can achieve this if you lose your composure.

2) You become so defensive that your answers are less spontaneous and appear to be contrived. If the defense succeeds in this they may prevail upon the judge to have you ruled a "hostile witness." At this point you will be directed by the judge to answer all questions directly with only a response of yes or no. In this "yes or no" environment, the defense will drive the direction of the cross-examination, without you being able to explain scientific issues which are legitimate but are "grey areas" for the lay people serving on the jury. Yes or know answers alone may be the seeds of reasonable doubt.

Regardless of whether the Court spares you rough treatment, maintain your composure and focus.
You are perfectly qualified to do your job. The defense will simply be trying to rattle you and reduce the confidence with which you present your testimony. You have done the analysis in an honest, competent manner and within the expectations of the international SWGDRUG convention. Answer the questions clearly, in lay terms as much as possible and your service to the Commonwealth is complete.

Conclusion of Testimony

At the end of the defense counsel's cross examination, the prosecutor may request a redirect line of questions. This action is to clarify certain points the defense questions challenged or introduced. It will be relatively brief.

In the same manner, if the Court permits redirect for the prosecutor, the defense is entitled to make a redirected cross examination to clarify the point it tried to make.

The redirect portion concerns a minimum of clarifying detail and will be relatively short compared to the initial testimony.

At the apparent conclusion of the questions, remain seated until the judge thanks you for your testimony and dismisses you. You are done now and may leave the court.